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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/510,580	02/22/2000	Richard A. Leeds	480169	4232

22504 7590 08/14/2006

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EXAMINER

VIG, NARESH

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

In the amendment received with the RCE, applicant has cancelled all previously pending claims 1-47 and added new claims 48-135.

Office action with Election/Restriction was issued. Currently elected claims 67-75 and 93-98 are pending in this application. Upon review of pending claims and conducting search for pending claims, examiner has determined that the pending claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted pending claims recite a new limitation, "the one or more tailored store screens being formulated by the presentation formulator by including and excluding selected information in at least one of the merchandise database and the services database at least in part based upon the location of the shopper's computer at the time of the current communication, as determined by the shopper data collector". To support the newly added limitation, applicant has removed the limitation from the originally claims which recited the limitation "a shopper database configured to store shopper information".

Art Unit: 3629

This clearly demonstrates that the location of shopper which was part of the shopper's database is now being dynamically determined in the newly added claims is a different invention. Therefore the newly submitted pending claims are distinct and divergent from the earlier claimed inventions and would require a new, divergent and different search. Such change in the inventions amount to a "Shift claiming another invention after an action given on the claimed subject matter and are therefore subject to "Election by Original Presentation". as analyzed above.

Kindly refer to the following MPEP excerpts for guidelines:

**819 Office Generally Does Not Permit Shift:**

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. **Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right).** When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in **MPEP § 821.03**.

Where the inventions are distinct and of such a nature that the Office compels restriction, an election is not waived even though the examiner gives action upon the patentability of the claims to the nonelected invention. *Ex parte Loewenbach*, 1904 C.D. 170, 110 O.G. 857 (Comm'r Pat. 1904) and *In re Waugh*, 135 F.2d 627, 57 USPQ 371 (CCPA 1943).

**821.03 Claims for Different Invention Added After an Office Action**

Claims added by amendment following action by the examiner, **MPEP § 818.01, § 818.02(a)**, to an invention other than previously claimed, should be treated as indicated by **37 CFR 1.145**.

**37 CFR 1.145 Subsequent presentation of claims for different invention.**

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed,

Art Unit: 3629

the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144

Therefore, newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the reasons given above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, pending claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment presenting only claims drawn to a nonelected invention is non-responsive (MPEP § 821.03). The currently newly added pending claims are not readable on the elected invention because they are subject to " Election by Original Presentation". as analyzed above.

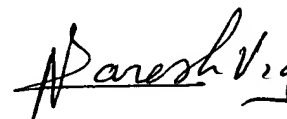
Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.**

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on M-F 7:30 - 6:00 (Wednesday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Naresh Vig', with a stylized flourish at the end.

Naresh Vig  
Examiner  
Art Unit 3629